

Lisbon, 3-4 November 2005



*I Lisbon Conference on
Competition Law and Economics*

Centro Cultural de Belém



PORTUGUESECOMPETITIONAUTHORITY

In cooperation with

Luso-American Foundation | Invest in Portugal Agency

The Portuguese Competition Authority is, under its statutes, fully committed to further research in competition policy and to nurture a competition culture among economic agents. In this regard, we will be organizing the First Lisbon Competition Law and Economics Conference.

The objective of the Conference would be to debate current issues related to competition law and economics. To this extent, leading experts from Europe and North America are being invited as speakers. The target audience consists of judges, academics, and economic and law practitioners active in competition policy and enforcement, as well as officials of European National Competition Authorities.

This Conference will address six issues: (i) antitrust enforcement and procedural rules under the modernization package; (ii) competition, regulatory costs, market imperfections and competitiveness in the European Union; (iii) competition and regulatory costs: the case of Portugal; (iv) the new merger regulation and judicial control; (v) modernization of article 82 of the EC Treaty and the abuse of dominant position and (vi) competition and regulation.





08h30 - 09h30

Registration

09h30 - 10h30

Opening Ceremony, chaired by His Excellency the President of the Portuguese Republic, Dr. **Jorge Sampaio**, with the participation of the European Competition Commissioner, Ms. **Neelie Kroes**, and of the President of the Portuguese Competition Authority, Prof. **Abel Mateus**.

1st Session

10h30 - 11h15

Antitrust enforcement *the modernisation package*

The European Competition Law framework was radically changed since May 1st, 2004. EC Regulation 1/2003 has implemented a decentralized system for the enforcement of EC competition rules, abolishing the previous authorization system. Under the new regime of parallel competences, National Competition Authorities (NCAs) and national courts are placed at the same level as the European Commission when applying articles 81 and 82 of the EC Treaty, the most important challenge of the new system being how to ensure an effective and uniform application of EU law.

In this first panel, enforcers, practitioners and academics will take a critical look at the instruments of competition policy conceived to implement EC Regulation 1/2003.

Moderator:

Prof. Rui Pinto Duarte,
Faculdade de Direito, Universidade Nova de Lisboa

Speakers:

Prof. Rosa Greaves,
University of Durham, United Kingdom

The impact of Regulation 1/2003 within the European Union: is cooperation within the ECN enough? Is procedural harmonisation needed?

Dr. James Venit,
Antitrust Matters and EC Competition Law

The new EC Competition regime perceived from the US: does it affect US law? Should the US Antitrust law be updated?

Dr. Emil Paulis, Director,
DG Comp, European Commission

Cooperation between NCAs: the ECN, a year after the Regulation 1/2003; towards a single binding EC leniency program?

Coffee break (15 minutes)



11h30 - 13h00

**Investigation powers when enforcing Competition Law:
EC Regulation 1/2003 and National Competition Laws
Some Procedural Aspects**

This panel will discuss practical aspects of enforcing EC Competition rules under the national procedural regime of each Member State, as the new EC Regulation recognizes the institutional and procedural autonomy of each Member State. Panelists are invited to assess and compare National Competition Authority mandates, as well as the European Commission's, regarding investigation powers. Regulation 1/2003 will be assessed in the light of the European Courts' jurisprudence.

Moderator: Dra. Teresa Moreira,
Member of the Board, Portuguese Competition Authority

Speakers: Prof. Frédéric Jenny,
Cour de Cassation, France

Assessment of EC Regulation 1/2003.

Prof. Laurence Idot
Université Paris I, France

Are NCA's investigation powers appropriate to pursue infringements of articles 81 and 82 of the EC Treaty? Are national procedural regimes compatible with the obligations imposed by EC Regulation 1/2003?

Prof. Wouter Wils,
Legal Service, European Commission

Assessment of Regulation 1/2003 in the light of the case law of the Court of Justice and the European Court of Human Rights.

2nd. Session

15h00 - 16h45

**Competition, regulatory costs, market imperfections
and competitiveness**

The Lisbon agenda for the EU as well as OECD and other institutions have raised the issue that lack of competition, market rigidities and inefficient regulation reduces substantially competitiveness of the EU in general and in each EU country in particular.

Drawing from the extensive work carried out at the OECD, the European Commission and reputed private research centres on this subject, this session will address recent success





cases with a major and quantifiable macroeconomic impact, based on microeconomic factors such as lack of competition (in general and in some important sectors) and inefficient regulation. The analysis will focus on the competitiveness and growth of the EU economy, regarding groups of countries or individual countries. In particular, it will address demography of firms and market dynamics in order to identify the costs to competitiveness of the lack of economic mobility, and point out major constraints and policy measures.

Moderator: **Dr. Rui Machete,**
*Chairman of the Executive Council,
Luso-American Foundation (FLAD)*

Speakers: **Dr. Giuseppe Nicoletti,**
OCDE

The impact of inefficient regulation on economic growth.

Dr. Adriaan Dierx,
*DG Economic and Financial Affairs,
European Commission*

The impact of inefficient regulation on economic growth.

Prof. Luis Cabral,
Stern School of Business, New York University, USA

Economic mobility, competition and competitiveness.

Coffee Break (15 minutes)

17h00 - 19h00 **Competition and Regulatory Costs: the case of Portugal**

This panel will look into the particular case of Portugal, in order to evaluate and quantify the impact of market imperfections and rigidities as well as the costs of government (state intervention) and regulatory failure in growth and competitiveness. Furthermore, the studies presented should point to important specific policy measures.

Moderator: **Dr. Costa Lima, CEO,**
Invest in Portugal Agency (API)

Speakers: **Prof. Vitor Gaspar and Prof. António Afonso,**
Bank of Portugal and European Central Bank

Costs of inefficient public services: a benefit-taxation approach.

Prof. Nuno Garoupa,

Universidade Nova de Lisboa

Costs of inefficiency in the judicial system, contract enforcement and bureaucracy.

Prof. Fátima Barros and Prof. João Confraria,

Universidade Católica Portuguesa

Structural competition, inefficiency in infrastructures and regulatory failure: impact on competitiveness and growth.





3rd. Session

9h00 - 10h30

The judicial review of the European Commission's merger decisions: the jurisprudence of the European Courts

Merger Control has been an important part of the EC Competition regime since 1989, allowing the European Commission to scrutinise structural operations of EC dimension and to safeguard competition through the imposition of remedies when needed or even by blocking some deals. In this panel, judges will share an overview of the European Court's jurisprudence that has so significantly influenced the main features of the European Mergers' regime, also looking into its interaction with national merger rules.

Moderator:

Prof. Dr. Luís Morais,

Faculdade de Direito, Universidade de Lisboa

Speakers:

Judge Bo Vesterdorf,

President of the European Court of First Instance

The European Courts' case law in the area of Merger Control: new standards for the Commission's practice?

Sir Christopher Bellamy,

President of the UK Competition Appeals Court

The European Merger regime seen from a national perspective – the jurisprudence of the European Courts.

Coffee Break (30 minutes)

11h00 - 13h00

The new merger regulation

The new Merger Regulation 139/2004, applicable since May 1st. 2004, set a new substantive criterion for assessing mergers, the *SIEC - Significant Impediment to Effective Competition*, and was followed by new Guidelines on Horizontal Mergers.

The new test embraced some new points coming out from the recent European Courts' jurisprudence and aimed at ensuring further convergence with the US *Substantial Lessening of Competition* merger test.

This panel will explore the economic rationale underneath the *SIEC* test and will compare the EC and the US experience in merger control.



Moderator: Eng. Eduardo Lopes Rodrigues,
Member of the Board, Portuguese Competition Authority

Speakers: Prof. Massimo Motta,
European University Institute

The economic foundations of merger control.

Prof. Luke Froeb,
Chief Economist, Federal Trade Commission, USA

Economic analysis and the US experience in the merger control area.

4th. Session

15h00 - 16h30 **Modernization of article 82 of the EC Treaty -**

The case law on article 82 of the EC Treaty has been criticised for being unclear, but until very recently, article 82 had not been the object of review. Within the Modernisation package and embracing further economic reasoning, the European Commission has been promoting a debate on competition policy in the field of unilateral conduct, aiming at future guidelines on the application of article 82.

This session will examine the state of the case law of article 82, considering the latest Commission decisions and the latest jurisprudence from the European Courts, namely relating to intellectual property rights.

Moderator: Prof. Eduardo Paz Ferreira,
Faculdade de Direito, Universidade de Lisboa

Speakers: Prof. Valentine Korah,
University College London, UK

Recent developments of article 82 cases: the need to reform article 82.

Prof. Lars-Hendrik Röller,
Chief Economist, DG Comp, European Commission

Economic analysis of article 82.

Prof. Eleanor Fox,
New York University, USA

Monopolization and dominant position: contrasting US and EU views.



Dr. José Luis Cruz Vilaça,

former President of the European Court of First Instance

The abuse of dominant position and Intellectual Property rights.

16h30

Coffee Break (15 minutes)

5th. Session

16h45 - 18h00

Competition and regulation

Competition policy is a tool for pursuing broader public goals and to achieve economic efficiency in general or in a given industry. In markets where there may be a “market failure”, some form of additional regulatory intervention may be needed, although it should increase competition rather than restrict it.

Sectoral regulators are suited to oversee technical regulation and public service obligations, setting conditions and requirements in a typically *ex ante* approach. Competition authorities have the responsibility to enforce competition law in any sector of activity and usually will intervene *ex post*, after a certain restrictive conduct or practice took place. This session will explore the relationship between competition and regulation and will address the interaction between competition authorities and sectoral regulators.

Moderator:

Prof. Dr. Vital Moreira,

Faculdade de Direito, Universidade de Coimbra

Speakers:

Dr. Ulf Böge,

President of Bundeskartellamt, Germany

Competition and regulation: What role can the State play for a better functioning of the markets?

Prof. Richard Whish,

King's College, UK

The economics of regulation – the importance of the effectiveness of regulatory policies.

Dr. Miguel Moura e Silva,

Director, Portuguese Competition Authority

Modalities for cooperation and coherence between competition authorities and sectoral regulators.

18h00

Closing ceremony,

chaired by the Ministry of Justice, Dr. **Alberto Costa**

